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decision in *Herrick v. Randolph*, *supra*, and is founded upon impregnable principles, which all sound lawyers must always regard as rendered inviolable by the United States Constitution. And this is the ground upon which the Connecticut court now found themselves; and which is the most which can be conceded to any state-statute exempting property from taxation.

Strictly speaking, we think, an exemption of property from taxation, on the ground that the state granted the title and the exemption for a consideration, should be restricted to taxes imposed upon the property itself, as it is upon real estate, or personalty sometimes, set in the list at a valuation. Such an

exemption should never be construed to extend to income derived from such estate and for which the owner is taxed personally. But the abhorrence of the people against what they call double taxation has sometimes led to the exemption of all the issues and incidents of such property, even to the buildings erected upon land, having such an exemption from taxation.

It has always seemed to us that the true principles on this subject are contained in the opinions of THOMPSON, J., in *Weston v. The City of Charleston*, 2 Pet. S. C. 449, and that of PARKER, Ch. J., in *Brewster v. Hough*, 10 N. H. 138.

I. F. R.

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### *Supreme Court of California.*

#### VANDALL ET AL. v. SOUTH SAN FRANCISCO DOCK COMPANY.

A corporation has no other powers than such as are specifically granted in its charter, or such as are necessary for the purpose of carrying into effect those expressly granted.

A corporation formed "to buy, *improve*, lease, sell, &c., real estate," may expend its funds for any purpose the direct and proximate tendency of which is to enhance the market value of its land, though the money is not expended on the land itself, *e. g.*, it may assess its stockholders for aid to a railroad which does not touch its lands, but which by giving increased facilities of access enhances their value.

The word "*improve*" used in such connection with real estate means to enhance its market value.

THIS was an action brought to restrain the defendant from selling the shares of stock held by the plaintiffs under an assessment made by the trustees of the company.

The defendant is a corporation organized under an amendment made in 1864 to the general Incorporation Act, stat. 1863, p. 149, and the plaintiffs are stockholders of the corporation.

The corporation was formed "to buy, *improve*, lease, sell, and otherwise dispose of real estate" in and near South San Francisco; "also, to build water front protection, slips, docks, piers, wharves, warehouses, and otherwise improve such property as may be obtained by the company." The company purchased

and owned a tract of land at or in the vicinity of South San Francisco; and another corporation known as the Potrero and Bay View Railroad Company had constructed, or was engaged in constructing a railroad from the city of San Francisco proper to the vicinity of the defendant's property; and an agreement was entered into between the defendant and the railroad company, whereby the latter bound itself within a stipulated period to increase the width of its road and the frequency of the trips of its cars over it, and to reduce the price of passage over it about fifty per cent., and to maintain these conditions for a period of ten years. The defendant, on its part, agreed to pay to the railroad company, as a consideration for these concessions, the sum of \$20,000, and the assessments in question were levied by the trustees on the stock of the company for the purpose of raising a fund sufficient to pay this demand. The railroad did not terminate upon or touch any portion of the property of the defendant, but it was established on the trial, and appears to have been admitted by the plaintiffs, that the increased facilities of travel over the railroad, resulting from the contract between the two companies, had already greatly enhanced the market value of the defendant's property, and were likely to increase it more largely in the future.

The opinion of the court was delivered by

CROCKETT, J.—Plaintiffs insist that, under its act of incorporation, the defendant has no power to expend the money of the company for the purpose stated, and that the assessment is, therefore, void. On the other hand, the defendant claims that the chief object of the corporation was to buy and sell real estate on speculation; and that with a view to that end it is expressly authorized to "improve" its real estate, so as to enhance its value; and that upon a fair and reasonable construction of the word "improve," as used in the certificate of incorporation, it must be held to include every act the direct and immediate tendency of which is materially to benefit or enhance the value of the property. The plaintiffs resist this construction, and maintain that the word "improve" can include nothing but acts performed on the land itself, such as the erection of buildings, the construction of roads across it, or other acts of a like nature performed on the land.

The only difficulty which arises in the solution of this question results from the peculiar nature of the corporation, and the very novel purposes for which it was formed. It is well settled that a railroad corporation, formed for the purpose of constructing, maintaining and operating a railway, cannot engage in the business of running a line of steamers in connection with the railway, however much such an enterprise may increase the business of the road and add to its profits: *Colman v. Eastern Counties Railway Co.*, 10 Beav. 1; *McCarty v. Roots*, 21 How. 432; nor engage in the banking business, in order to raise a fund with which to construct or operate its road: *Waldo v. Chicago Railroad Co.*, 14 Wis. 580. It may be stated as a general proposition, "that a corporation has no other powers than such as are specifically granted, or such as are necessary for the purpose of carrying into effect the powers expressly granted:" Angell & Ames on Corp. sect. 111.

As if to preclude all doubt on this point, the second section of our General Corporation Act has, in express terms, re-enacted this provision of the common law.

It cannot be doubted, therefore, that a corporation in this state may not only exercise the powers specifically enumerated in its certificate of incorporation, if they be such as are authorized by law, but also such other powers "as shall be necessary to the exercise of the powers so enumerated and given." It results that in determining whether a given act is within the power of the corporation, we must consider, first, whether it falls within the powers expressly enumerated in the certificate; or, second, whether it is necessary to the exercise of one of the enumerated powers. The powers enumerated in this certificate are to buy, *improve*, lease, sell, or otherwise dispose of real estate; and to build water-front protection, slips, docks, piers, wharves, warehouses, and otherwise improve such property as may be obtained by the company.

On behalf of the plaintiffs it is insisted that the contract for additional railroad facilities, however much they may enhance the value of the property, is not within any of the enumerated powers, nor necessary to the exercise of any of them.

But in examining this question, we must necessarily consider the general purposes for which the corporation was formed; and must give such reasonable construction to the terms employed, as will tend to promote rather than to defeat or obstruct the ends

for which the corporation was organized. In authorizing a corporation to be formed for the purpose of buying, selling, leasing, and improving real estate, the statute conferred upon the incorporators all such implied or incidental powers as shall be necessary to the exercise of those expressly granted. It is evident the corporation might purchase real estate and improve it, for the sole purpose of selling it at a higher price or leasing it at an enhanced rent. To speculate in the purchase and sale of real estate may be the sole object of such a corporation; and such appears to have been the purpose of this corporation. In furtherance of this end and with a view to enhance its value, it is expressly authorized to improve the property so purchased; and the plaintiffs insist that by this term is meant only erections upon or something performed on the land itself, to ameliorate its condition; such as the erection of buildings, or fences, or necessary grading, or ditching to improve the drainage. But in view of the evident purpose and design for which the corporation was organized, I think this is too narrow a construction of the word "improve," as used in the certificate. It may be that its ordinary meaning, as usually employed, is limited as claimed by the plaintiffs. But it also has a larger and wider signification; and amongst other definitions, Worcester defines the word "improve" to mean, "to make good use of; to employ advantageously; to increase, augment, or enhance, as to that which is evil;" whilst Webster defines it, "to make better; to advance in value; to use or employ to good purpose; to make productive; to turn to profitable account; to use for advantage." In view of the fact that these corporations are or may be formed for the sole purpose of purchasing real estate, enhancing its value and then selling it for an increased price, I think the term "improve," as here used, was employed in its more liberal sense, and includes the performance of any act, whether on or off the land, the direct and proximate tendency of which is to enhance its value in the market.

But I am not to be understood as holding that the corporation may do any act which, in some remote degree, may tend ultimately to enhance the value of the property. It could not, for example, establish a line of steamers to Japan, or an Emigration Aid Society, on the plea that an increase to the trade or population of the state would promote the general prosperity, and thereby enhance the value of the corporate property. But, as already stated, the act must be one the direct and proximate tendency of

which is to benefit the property or enhance its value. If the property, for example, should be surrounded by an impenetrable morass, or rugged hills, so that it is inaccessible and valueless in its present condition, I do not doubt that the corporation might drain or bridge over the morass, or construct a road across the hills, so as to render the property accessible and thereby enhance its value. This would justly be held to "improve" the property without straining, in the least degree, the meaning of the term, as here employed. If the opposite construction were to prevail, a work imperatively required to render the property available for the purposes for which it was acquired could not be performed. If the land was threatened with inundation, and was about to be washed away by a freshet, nothing could be done to avert the threatened calamity; or if its value was destroyed by a contiguous nuisance, no money could be expended to abate the nuisance.

I am satisfied so narrow a construction of the powers granted to this class of corporations would, in many cases, practically defeat the purposes for which they were organized. I am aware that in some cases it may be difficult to define accurately the point at which the benefit to be derived from a proposed work would cease to be direct and proximate, and would become so remote as not to fall within the rule. But it is impossible to lay down an inflexible rule to govern such cases, and each case must be determined on its own circumstances.

I am satisfied that this case comes fully within the rule, and that the benefit to the property of the company, resulting from the contract with the railroad company, is direct and proximate and not remote.

I may remark in conclusion, that whatever difficulties surround this question, result from the peculiar nature of this class of corporations, organized for the novel purpose of speculating in real estate; and though it may be a very questionable policy, which permits corporations to be formed for such a purpose, that is a consideration to be addressed to the legislature and not to the court. So long as such corporations are authorized by law, it is the duty of the courts to give such effect to them as the statute contemplates.

Judgment reversed, and the cause remanded, with an order to the District Court to dissolve the injunction and dismiss the action.

This case is of the same class with the inquiry as to the right of corporations, whether municipal or private, to the numerous others of late, presenting

form connections with railway companies, by way of association or contract. Although it must be admitted some doubt will naturally arise in regard to the right of a private corporation, like the one in question, to build a railway or take stock in one, or in any other mode subsidize it, for the purpose of enhancing the value or the ready sale of its lands, under the shield of the express authority given to "improve" them, it cannot, we think, be fairly argued, that, upon principle, the thing is of the same questionable character, as for municipalities to do the same. It is no part of the business of a municipality to facilitate access to and escape from its own borders; but only in that regard to afford comfortable means of travel and traffic within its limits. Nor can it fairly be said that it comes within any well defined or clearly recognised function of the municipal governments of the state, to do anything with the direct and leading purpose of increasing the value of property, real or personal; or indeed to advance trade and business in general, either within or without its territorial limits, as it owns no such property and can embark in no trade. Hence the incongruity, in allowing the municipalities, whose functions are simple and strictly defined and restricted to the narrowest limits, to mix themselves up in any possible form with private corporations, having rights and duties of an entirely separate and distinct character, is altogether more obvious than can be claimed in regard to a corporation like the present, whose leading object and purpose is to advance the value and ready sale of its own lands. There seems to be no good ground to question the right of such a corporation to facilitate access to and egress from such lands, in all legitimate

modes. And we should not be inclined to question that this might be done by such a corporation by means of improved railway facilities, unless the terms in which its powers are defined, exclude that particular mode or else enumerate them in such a way, as to indicate very obviously that this particular one could not be considered as fairly embraced. And there is nothing in the enumeration here, which would seem fairly to exclude expending money to increase railway facilities. The mere "buying and selling" of real estate in large quantities, in the new states, might fairly enough embrace this. And especially will this construction appear reasonable and natural, if we consider the express provisions in the charter for "improving" the same in connection with its purchase and sale, and as one of the natural and direct modes of producing an enhanced price. And this becomes a more obvious and allowable view, when we consider that many analogous modes of improvement are specially enumerated, such as building "water-front protection, slips, docks, piers, wharves, warehouses," &c., &c., when especially we consider that increased railway facilities are among the indispensable things to render the enumerated facilities productive in the increase of traffic by land and commerce upon the ocean. The word "improve" as applied to real estate, for use and enjoyment, no doubt, commonly extends only to erections and meliorations upon the land itself. But when the land is to be brought into the market and *improved* for the purpose of sale and advancement in price, it will naturally require a much more extended application, and we cannot fairly say that we think the view the court take objectionable.

I. F. R.